(1)

Supreme Court, U.S.
FILED

03 134 FEB 11 2003

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

HILDA I. OZANTE – PETITIONER

VS.

LAW OFFICES OF RUTTH PRAGER et al.-
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

HILDA I. OZANTE
(IN PRO PER)
9908 DOMO ST.
WHITTIER, CALIFORNIA, 90601
TELEPHONE # (562) 692- 5301

40 pp

QUESTIONS PRESENTED

1. **The book titled, California Rules of Court for the State of California (2001 edition), provides in convenient form court rules governing state and federal practice for the State of California. The rules provided within are to give structure and direction to the many individuals seeking justice in various legal aspects. Our constitution states "justice for all", it does not say "justice for all but only if you are a legal professional". Why is it then that in this case the attorneys' mistake is allowed but the mistake of the plaintiff is not?**

2. **Is there an unspoken value or clout that is given to attorneys that are dishonest and un-professional in their practice, so that these same unethical attorneys can continue to render inadequate legal advice to unknowing and naive clients?**

3. **In the state of California every citizen should be able to seek legal advice from attorneys that are honest and that possess a high moral and ethical value of integrity in their work as well as in up-holding the law, without having any fear of unprofessional misconduct. In this case filing and not filing of documents in a timely manner and giving false information to the plaintiff is considered professional malpractice. Is it not the duty and**

obligation off the United States Supreme Court to maintain and up-hold the law in every state of this nation? The rules and regulations set forth by the "Rules of Court" are there to be utilized to keep all legal business in the most honest and correct way in all legal transactions.

4. **Does the United States Supreme Court have the responsibility to maintain and regulate the professional conduct of members of the State Bar? The rules have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and professional Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with the standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar.**

5. **Why are the rules in this case being applied; deemed to create, augment, diminish or eliminate any substantive legal duty of lawyers (Law Offices of Ruth Prager, et. al) or the non-disciplinary consequences of violating such a duty? These legal professionals are dishonest, untrustworthy, falsified**

documents, lied, responded to a summons 77 days late (did not ask for an extension of time) instead of responding within the 30 days the court mandates and that is okay because they are legal professionals?

6. Are the Law Offices of Ruth Prager to be considered a "Law Firm"? Definition of a law firm is a law corporation that employs more than one lawyer or that an "Associate" means an employee or fellow employee who is employed as a lawyer.

7. The State of California promotes "IN PRO PER" and user- friendly court system, to make the legal system less threatening. Than persons like myself try very hard to bring fourth the truth and even with the truth the judge or judges will give the ruling to the respondent even when their wrong is more than obvious. My question to you is why?

List of Parties

{} All parties appear in the caption of the case on the cover page.

{X} All parties do not appear in the a caption of the case on the cover page. A list of all the parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Hilda I. Ozante
9908 Domo St.
Whittier, California 90601
Telephone# (562) 692-5301
Plaintiff, Appellant and Petitioner In Pro Per

Clerk to the
Honorable Madeleine I. Flier, Judge
Los Angeles County Superior Court
111 North Hill St.
Los Angeles, California 90012

Supreme Court of California
300 S. Spring St. 2nd Floor
Los Angeles, California 90013-1204

Berman, Berman, & Berman
Attorney, Stephanie Berman Schneider
11900 W. Olympic Blvd. 6th Floor
Los Angeles, California 90064-1151

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:
The opinion of the United States court of appeals appears at Appendix_____ to the petition and is
[ ] reported at _____;
or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.
[x] For cases from **state courts**:
The opinion of the highest state court to review the merits appears at Appendix ___D___ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.
The opinion of the _____Appeals Court_____ court Appears at Appendix __A__ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

[ ] For cases from federal courts: The date on which the United States Court of Appeals decided my case was_____ .

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied y the United States Court of Appeals on the following date: _____and a copy of order deny rehearing appears at Appendix _____.

[ ] An extension of the to file the petition for a writ of certiorari was granted to including _____ (date) in Application No. _____.

The jurisdiction of this court is invoked under 2 U.S.C. §1254 (1).

[x] For cases from **state courts:**

The date on which the highest state court decided my case was _*Dec. 11, 2002*_. A copy of that decision appears a Appendix __D__.

[x] A timely petition for rehearing was thereafter denied on the following date; _Oct. 7, 2002, and a copy of the order denying rehearing appears at Appendix __C__.

[ ] An extension of time to file the petition for a write of certiorari was granted to and including _____(date) on _____(date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

Constitutional and Statutory Provisions Involved

DEFENDANTS MUST SERVE AND FILE THE MOTION TO QUASH WITHIN THE TIME PERMITTED TO PLEAD, UNLESS THE COURT EXTENDS THE TIME FOR GOOD CAUSE SHOWN {CCPs 418.10(a)}. The defendants did not make any effort to file a response to the Summons and Complaint mailed to them. They filed a Motion to Quash Service of Summons and Complaint **77days** after they received the official notice of the Summon and Complaint. The defendants did not file a plea for an extension of time. The Summons plainly states that you have 30 Calendar Days to respond.

TABLE OF MINUMUM TIME LIMITS
FILE THE PETITION WITHIN

CIVIL

10 DAYS after service of written notice on entry of an order.

on a motion for judicial disqualification
on a denial of a motion to quash service of process
on denial of a motion for summary judgment

20 DAYS after service of notice of an order

on a motion to expunge a lis pendens
on a motion to determine whether a settlement is in good faith

30 DAYS after service of written notice of entry of an order on a motion to change the place of trail
60 DAYS after entry of an order not enumerated above

CRIMINAL

15 DAYS after entry of an order denying a motion to dismiss

30 DAYS after entry of an order denying a motion to suppress evidence in a prosecution for a felony offense

CODE CIV. PROC. 170.3 (D)

An order granting motion to quash service of process is an appealable order. CODE CIV. PROC. 904.1

The trial court may allow up to 20 additional days. CODE CIV. PROC. 418.10 (a).

An order granting a motion summary judgment is an appealable order. CODE CIV. PROC 437 c (1).

The trial court may extend the time period for up to 20 additional days. The period is automatically extended for service mail; five days for service in California; 10 days for service in the United States, but outside California; and 20 days for service outside the United States. CODE CIV. PROC 437c (1)

The trial court may extend the time for filing up to 20 additional days; however, the order extending the time for filing must be made during the initial 20-day period. The

petition must be filed no later than 60 days after entry of the order. CODE CIV. PROC. 409.4 - CODE CIV. PROC. 887.6 provides a maximum 20 day extension.

CODE CIV. PROC. 400 The general time limit runs from the date of the entry of the order, not from the date of service of written notice of ruling. The appellate court has the discretion to review a petition filed after the 60-day period, but generally will not do so unless good cause is shown. Popelka, Allard, McCowan v. Superior Court, 107 Cal. APP. 3D 496, 499(1980).

Pretrial review of the denial of a motion pursuant to PEN. Code 999a or 1538.5 is limited to motions made in the trial court 45 days following the arraignment on the complaint if a misdemeanor or 60 days following the arraignment on the information or indictment if a felony unless petitioner was unaware of the issue or had no opportunity to raise it. PEN. CODE 1510.

The 15-day time limit applies when the motion made pursuant to PEN. CODE 995 is based on lack of reasonable cause to the petitioner to answer in superior court. PEN. CODE 999a. The defendant must renew or make the motion to suppress evidence in the superior court. After a special hearing is held in the superior court within 30 days of the denial of the motion at the special hearing. CODE CIV. PROC 1538 (i).

A SUMMOMS MUST PROVIDE NOTICE AND OPPORTUNITY TO BE HEARD IN COMPLIANCE WITH THE 14TH AMENDMENT DUE PROCESS CLAUSE.

CC&P 412.30 states that substantial compliance is all that is necessary and that slight defects may be overlooked if the defendants had actual notice of the lawsuit and the summons itself was such that the defendants must reasonably have known that the summons and complaint was being directed at them (Cory vs. Crocker National Bank).

{4.5} Applies to all civil actions: The nature of the claim sued upon is not controlling as to the method of service constitutionally required. Rather, the sufficiency of any particular method of service depends on its ability to inform the defendants of the adverse consequences of the lawsuit (Greene vs. Lindsey {1982} 456 US 444, 4450-451, 102 S. Ct.1874, 1878-1879).

{4.10} Statutes liberally construed: The statutory requirements are construed to uphold jurisdiction rather than defeat it. As long as the defendants receives actual notice of the lawsuit, substantial compliance with the Code Provisions governing Service of Summons will generally be held sufficient.

The defendants were served by Certified mail with return receipt the first time (on June 25, 2001). On October 12th, 2001 the defendants again served by mail by appellant (exhibit 000050 in CT). The defendants were also served the 3rd time by Golden State flyers, messenger service (exhibit 000052 CT)

The Rules of Professional Conduct are intended not only to establish ethical standards for members of the bar, but also to protect the public (8th Cir. 1996). The defendant's deliberate acts to violate the rules set forth by the bar are beyond understanding and comprehension. It is absolutely an act of negligent and un-becoming behavior of a legal professional as these two defendants claim to be. [Day vs. Rosenthal (1985) 170 Cal. App. 3d 1125, 1147,217 Cal. Rptr. 89, attorney's violation of rules, established attorney's negligence, even in absence of expert testimony]. As in the case, (Day vs. Rosenthal), negligence and legal malpractice has not been established by an expert, but by the Appellant who has had nothing but incompetent legal misrepresentation by these two individuals. The unethical behavior of the defendants has caused this court an array of burden. The unethical behavior of the defendants has caused the Appellant additional distress, an added financial burden, and stressful time consuming legal work that is unfamiliar to the Appellant. The added burden to all parties involved in this legal action is then consumed with apprehension at the thought of other individuals that will be or have been misrepresented by the defendants. This court has a legal, moral and ethical responsibility to the Appellant and the public to protect them from these corrupt individuals, the defendants. This court has the responsibility to the plaintiff as well as the general public to be protected from these unprofessional and dishonest individuals.

STATEMENT OF THE CASE

A. Appellant files a Summons and Complaint against the Law Offices of Ruth Prager, Attorney at Law Ruth Prager and Oscar Cepeida Paralegal at Law (exhibits 000001, 000037 in CT).

B. On June 11, 2001, Appellant filed a complaint against the defendants, for not filing on a timely and profession manner a claim against the County of Los Angeles for the unlawful removal of the corneas of Appellant's son, David G. Yanez Jr.

C. On August 17, 2001, clerk (Theresa Allen) at L.A.S.C. will not allow Plaintiff to file Request For Entry of Default.

D. On August 20, 2001, the trial court clerk issued the following orders; Order to Show Cause for Failure to File Proof of Service, Order to Show Cause for Failure to Proceed with Default Judgment, and Notice of Status Conference (exhibits 000009, 000010, 000011, 000030, 000031, 000032 in CT).

E. On or about August 25, 2001 the Appellant went to Department 37, where clerk advised Appellant to wait for date of Status Conference.

F. On September 04, 2001 defendants file Motion to Quash Service of Summons and Complaint. Appellant's Proof of Service on file on June 25, 2001 (exhibits 000008, 000044 in CT).

G. On or about September 05, 2001 the Appellant went for the 2nd time to Department 37 and was advised not to file any documents but to show up for the October 01, 2001 hearing.

H. Special hearing on Motion to Quash Service of Appellant's Summons and Complaint is scheduled for October 01, 2001 (exhibit 000012 in CT). Council for defendants and Appellant appeared before Judge M. Flier.

I. Appellant did not know she had to respond to Motion to Quash Service of Summons and Complaint. Appellant advised the Honorable Judge Flier that she was instructed by Department 37 personnel not to submit any documents and to wait for hearing on Notice of Status Conference.

J. The Honorable Judge, Madeleine I. Flier instructed Appellant to file, Opposition to defendant's Motion to Quash Service of Appellant's Summons and Complaint, by October 09, 2001. I then asked the Honorable Judge Madeleine I. Flier, if I had to re-serve my Summons and Complaint and she said that she was not able to give Appellant any legal advice.

K. Appellant went on to re-service the defendants with the original Summons and Complaint as well as Opposition to Motion to Quash. Appellant's Proof of Service is filed (exhibits 000008, 000044, 000050 in CT).

L. On October 09, 2001, Appellants files Opposition to Motion to Quash Service of Summons And Complaint.

M. On October 16, 2001, plaintiff asked the Honorable Judge Madeleine I. Flier, if the filing of Motion to Quash Appellant's Summons and Compliant within the time limits set forth by the court, she responded "I just do not know".

N. On October 16, 2001, the Honorable Judge Madeleine I. Flier granted the Motion to Quash Appellant's Service of Summons and Complaint, without prejudice.

O. On October 26, 2001, Appellant filed the Notice of Appeal.

REASONS FOR GRANTING THE PETITION

As of now, the appellant is aware that certified mail is not or was not the "Best" method of Proof of Service to give to the defendants. The defendants, practice as legal professionals and had reasonable knowledge that the Summons and complaint was directed at them. The reason that the Appellant at that time served them by certified mail was to get back an acknowledgement of Proof of Service. The Appellant did receive the receipt of service which acknowledges proof of service by the United States Postal Service, which may not be completely correct but in essence Proof of Service was and is obtain. The Appellant has satisfied the substantial compliance requirement of the statute and as a consequence the Quashing of Service and Summons and Entry of Dismissal based thereon must be held prejudicially erroneous and must be reversed.

The State of California only requires that substantial notice be given and Appellant has met such requirement (exhibit 000007, 000008, 000034, 000035, 000036, 000043, 000044, 000050 in Clerk's Transcript). The **"Best"** method is, not constitutionally required by law. In this case both defendants had substantial notice as required by law (CCP 412.20). The fundamental issue (CCP section 412.30) on appeal is whether the Summons served upon the respondent is valid and in compliance, and in this case Appellant believes that the Summons and Proof of Service are valid. If the respondents/ defendants did not

reasonable believed that the Summons and Compliant was not directed at them, than there would have been no response. The fact that both defendants have council representing them in this legal action, shows the Court and the Appellant that defendants had reasonable knowledge that the Summons and Compliant was directed at them, [Cory vs. Crocker National Bank (1981) 123 CA 3d 665, 669, 177 CR 150, 153], [Dill vs. Berquist Construction Co., Inc. (1994) 24 CA 4th 1426, 1436-1437, 29 CR 2d 746, 751-752].

As stated in the November 25, 1968, Report of Judicial Council's Special Committee on Jurisdiction, pp.14-15.

The provisions of CCP413.10 – 417.40, states " that this chapter should be liberally construed to effectuate service and uphold the Jurisdiction of the Court, if actual notice has been received by the defendants and in the last analysis, the Question of Service should be resolved by considering each situation from a practical stand point.

The liberal construction rule, if it is anticipated, will eliminate unnecessary time-consuming and cost disputes over legal technicalities without prejudicing the Right of the defendants to proper notice of court proceeding.

The defendants filed a Motion to Quash, Appellants Service of Summons and Complaint on September 04, 2001. The Judge by this time had filed; ORDER TO SHOW CAUSE FOR FAILURE TO FILE PROOF OF SERVICES, original

Proof of Service was filed on June 25, 2001, (pg. 000007, 000008, 000043, 000044 of Clerk's Transcript), ORDER TO SHOW CAUSE FOR FAILURE TO PROCEED WITH DEFAULT JUDGEMENT, and NOTICE OF STATUS CONFERENCE, on August 20, 2001.

The Summons (Citacion Judicial), notice to defendants states, " *You have 30 calendar days after this summons is served on you to file a typewritten response at this court. A letter or phone call will not protect you; your typewritten response must be in proper legal form if you request the court to hear your case. If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney; you may call an attorney referral service or a legal aid office (listed in the phone book)(exhibit 000007, 000043 in CT).*

The Honorable Judge Flier allowed the filing of Motion to Quash, after the time frame allowed by law. The Motion to Quash was filed **77days** from the time of service. At the special hearing, October 01, 2001, on Motion to Quash Service of Summons and Complaint, the Appellant informed the Honorable Judge Flier that she was instructed by her court personnel not to file any continuation of papers with the court because a hearing date was scheduled for the Notice of Status Conference. On October 01, 2001, the Honorable Judge

Madeleine I. Flier informed Appellant, that she had until October 01, 2001 to comply with any CCP that had to be executed in order to comply with the Rules of Court. The Appellant did as instructed. Opposition to Motion to Quash by the Appellant was served (exhibit 000032, 000050, 000052 in CT) and re-service of the original Summons and Compliant (exhibit 000050). At the second hearing, the trial court ruled erroneously in granting the defendants, Motion to Quash Service of Summons and Complaint. The *defendants filed* Motion to Quash Service of Summons and Compliant after the **30 calendar days** allowed by the rules of court (exhibit 000012 in CT). The defendants made no effort to respond to the Summons in a timely manner. Therefore, the Court should have jurisdiction over the defendants and this legal action. The court must reverse the erroneous dismissal of Appellant's Service of Summons and Complaint.

This Court also has the responsibility and obligation to the people of these United States to make sure that the Professional Rules of Conduct and Code of Ethics are maintained by all legal personnel. For all of the above reasons this court has the authority to maintain and enforce the rules and regulations set forth by the State and the Constitution of our Nation.

In conclusion the petitioner respectfully request that an evaluation of all the facts set forth be given an un-bias opinion and that this petition be granted, in order to bring justice for the petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted.

Hilda I. Ozante

Hilda I. Ozante

Date: December 20, 2002

APPENDIX A

NOT TO BE PUBLISHED IN THE OFFICIALREPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HILDA I. OZANTE
Plaintiff and Appellant,

B 154237

vs.

(Los Angeles County Super. No. BC 252121)

RUTH PRAGER, et al.,
Defendants and Respondents.

APPEAL from an order of the Superior Court of Los Angeles County.

Madeleine I. Flier, Judge. Affirmed.

Hilda I. Ozante, in pro per, for Plaintiff and Appellant.

Berman, Berman & Berman and Stephanie Berman Schneider for Defendants and Respondents.

Plaintiff Hilda Ozante appeals from an order of dismissal by the court after it granted the motion of defendants Ruth Prager and Oscar Cepeida to quash service of the summons and complaint. Plaintiff contends she substantially complied with the service requirements. We affirm.

FACTUAL AND PROCEDURAL SYNOPSIS

On June 11, 2001, appellant filed a compliant for legal malpractice and breach of contract against respondents Ruth Prager, an attorney, and Oscar Cepeida, a paralegal. The complaint alleged respondents had not filed a claim against the County of Los Angeles for the coroner's unlawful removal of the corneas of appellant's son.

On June 20, appellant served respondents by mail. Neither respondent signed a notice and acknowledgement.

On August 20, the court issued orders to show cause for failure to file proof of service and to proceed with default judgment.

On September, 4, by special appearance, respondents moved to quash service of the summons and complaint on the ground appellant had failed to comply with California law by attempting to serve them by certified mail without the required notice and acknowledgment of receipt. Supporting declarations were attached to the motion.

Appellant failed to oppose the motion. At the initial hearing, the court advised appellant that she had not properly served respondents because she had served them by certified mail. The court provided appellant with additional time to file opposition and continued the hearing.

On October 5, by mail, appellant served her opposition to the motion to quash and the summons and complaint on "Defendants."

Appellant's opposition stated she had served respondents by mail and complied with the law to the best of

her ability based on her limited knowledge of the rules of court. Although appellant attached exhibits to her opposition, she did not include a declaration authenticating those exhibits. At the continued hearing, the court stated service by mail on California Residents was only proper with acknowledgement of receipt. The court then granted the motion to quash and dismissed appellant's action without prejudice.

Appellant filed a timely notice of appeal.

DISCUSSION

Appellant contends she properly served respondents because she substantially complied with the requirements of California law. Methods of service are strictly construed. (Slaughter v. Legal process & Courier Service (1984) 162 Cal.App.3d 1236, 1251.) Throughout appellant's briefs, she relies on the Code of Service Procedure section 412.30, which is inapplicable to this case as it addresses on a corporation.

Absent a general appearance, compliance with a statutory method of notification is necessary to give the court personal jurisdiction. (2 Witkin, Cal. Procedure (4th ed. 1996) jurisdiction, § 114, p. 658.) Service of process "must conform to statutory requirements." (Honda Motor Co. v Superior Court (1992) 10 Cal. App.4th 1043, 1048.)

When a defendant argues service of summons did not bring her within the court's jurisdiction, the plaintiff has "the burden of proving the facts that did give the court jurisdiction, that is the facts to an effective service. "(Coulston v. Cooper (1966) 345 Cal.App.2d 866, 868.)

The Code of Civil procedure sets forth four ways to service process in California: personal delivery (Code Civ. Proc., § 415.10); substitute service (§ 415.20); mail and acknowledgment of receipt (§ 415.30); and service by publication (§ 415.50). The only method at issue in this case is service by mail and acknowledgment.

Appellant states she served respondents three times—by certified mail, by regular mail and by personal service. The record shows appellant served the summons and complaint on respondents by mail on June 20, at Prager's West Los Angeles and Alhambra office addresses.

Statutory references are to the Code of Civil Procedure.

The record includes a certified mail receipt for service on the Alhambra address signed by Cepeida. The record also includes a proof of service for "Opposition to defendant's Petition for Motion to Quash Service of Summons & Complaint- Original Complaint Summons & Proof of Service on defendants." No defendant's name, address to be served or identification of the case appears on that proof of service. There is no proof of the required acknowledgment signed by either respondent in the record. (§ 415.30, subd.(c).) The personal service was only for the opposition to respondent's motion to quash and not for service of the summons and complaint.

Appellant does not claim to have received an acknowledgment; rather she argues that the best method is not required, respondents had actual notice, and respondents signed a certified mail receipt from the United States Postal Service.

"Service of summons in conformance with the mode prescribed by statute is deemed jurisdictional. Absent such service, no jurisdiction is acquired by the court in the particular action." (Sternbeck v. Buck (1957) 148 Cal. App.2d 829, 832.) A party's actual notice of a legal proceeding is not sufficient to create jurisdiction over the party. (Kappel v. Bartlett (1988) 200 Cal. App.3d 1457, 1466-1467; dr. Ing H. C. F. Porsche A. G. v. Superior Court (1981) 123 Cal. App. 3d 755, 762.) There is no duty to act upon a defectively served summons, (Slaughter v. Legal Process & Courier Service, supra, 162 Cal. App.3d 1236, 1251.) The mere return of a postal service return receipt does not substitute for an executed notice and acknowledgment of receipt. (Tandy Corp. V. Superior Court (1981) 117 Cal. App.3d 911, 913.)

For the first time in Appellant's reply brief, she contends respondents had to serve and file their motion to quash within the time to plead permitted by section 418.10, subdivision (a). New issues usually may not be raised in a reply brief as the other side does not have the opportunity to respond, (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 616, pp. 647-648.)

Accordingly, as respondents were not properly served because no executed acknowledgment of receipt was returned to appellant, the court properly granted their motion to quash.

Disposition

The order is affirmed. Respondents to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

I concur: WOODS, J.

LILLIE, P.J.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

I respectfully dissent. The reason is so simple and obvious only a brief opinion is required.

The trial court granted defendant's motion to quash service, despite the fact that motion was filed 47 days after the period the law allows for filing of such a motion. The relevant sections of the California Code Of Civil Procedure provide a defendant has 30 days after receiving actual but allegedly defective service of a complaint to file a motion to quash that service. The only exception is if the defendant receives permission from the court to file a late motion, and no such request was made or granted here. Here the defendants were served by certified mail and had actual notice, as evidenced by the certified mail returns, on June 25, 2001. Thus, to be timely they would have had to file their motion to quash service by July 25, 2001. Instead they waited until September 4, 2001, some 77 days after receiving the original summons and complaint.

Appellant, despite being a pro per litigant, questioned whether the motion to quash was timely at the hearing on that motion. Rather than researching the issue, the trial court responded "You know, I really- I just don't know." Then the court proceeded to grant the motion to quash.

Section 418.10 reads in pertinent part "(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: [¶] (1) To quash service of summons on the ground of inconvenient forum. [¶] (2) To stay or dismiss the action on the ground of inconvenient forum. [¶] (3) To dismiss the action pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110) of Title 8."

In this case, the pro per was correct and the trial judge wrong in their instincts about the relevant law.

At oral argument, the defendants had only one response to this ground for reversing the granting of their untimely motion to quash- the pro per appellant did not raise the issue until her reply brief. There are two reasons appellant's tardiness in raising this issue does not mean defendants get away with their own tardiness in filing the motion to quash.

First of course, appellate courts are free to decide appeals on the basis of issues the parties fail to raise at all, and certainly as to issues of the parties raises late. This is one of those cases which cries out for an appellate court to intervene despite a technical deficiency in the appellant's briefing. Here the trail court's erroneous recollection of the law misled the pro per litigant to believe the defendants belated motion to quash was indeed timely. No wonder it took this non-lawyer some time and some courage to second guess the judge and discover the law was otherwise, Furthermore, the error is clear and obvious on the record,

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Section 430.40 describes the time allotment permitted: "(a) A person against whom a complaint or cross-complaint has been filed may, within 30 days after service of the complaint or cross-complaint, demur to the complaint or cross complaint".

As explained long ago by the California Supreme Court: "This court has heretofore said, that…it is undoubtedly at liberty to decide a case upon any points that its proper disposition may seem to require, whether taken by counsel or not,…" (Hibernia Sav. And Loan Soc. v. Farnham (1908) 153 Cal. 578, 584, citing Webber v. Clarke, 74 Cal.11.)

In recent years, the Judicial Council has undertaken to make California's courts more "user friendly" to the millions of pro per litigants now seeking justice before our judges.

only requiring the reviewing court to examine the documents- the complaint, the motion to quash, etc.– the parties filed and the dates stamped on those documents. There is no need to evaluate testimonial evidence or anything else beyond the pleading.

The second reason for overlooking the fact appellant first raised this issue in her reply brief is yet more compelling, however. The primary reason for looking with disfavor on issues first mentioned in the reply brief is a concern it is unfair to respondents who have no chance to brief an answer to the new issues. But in this case respondents conceded error during oral argument.

Many courts have established "self-help centers," some counties have computerized "kiosks" to aid pro per litigants in preparing pleadings, and the Judicial Council recently inaugurated a self-help website. But, as this case illustrates. No matter how much assistance the judicial branch provides in the preparation of pleadings and other pre-trial steps, it does little good once the pro per enters the courtroom. Here, as is typical indeed universal in cases involving pro per litigants opposing represented parties, the trial judge informed the pro per: "Well, if you're going to represent yourself, you're going to be treated as an attorney....[¶] I'm indicating to you that if you're representing yourself, you have to perform as you would- I mean, I'm going to treat you as I would any attorney, so I'm just indicating that to you." On that basis, the trail judge refused to provide any guidance to appellant as to the options she had available to avoid dismissal under the motion to quash, including serving defendants with this very same summons and complaint through personal service-or one of the other appropriate methods outlined in the code – before the motion was heard.

Instead of offering some kind of substantive response or requesting an opportunity to do so, their counsel admitted the motion to quash had been filed too late and the trial court erred in saying it was timely. She relied entirely on an argument this court should ignore the technical deficiency in their motion because appellant had raised that issue too late. In other words, we should enforce the technical deficiency in appellant's service of process despite the technical deficiency in respondents' challenge to that service. This I, as least, am unwilling to do.

JOHNSON, J.

APPENDIX B

LAW & MOTION
JUDGE MADELEINE FLIER
DEPARTMENT 37

HEARING DATE:	10/16/01
CALENDER NO.:	9
CASE NAME:	OZANTE v. PRAGER
CASE NO.:	BC252121
TYPE OF MOTION:	MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT.
MOVING PARTY:	DEFENDANTS.
OPPOSING PARTY:	PLAINTIFF.
TENTATIVE RULING:	The motion is granted. This entire action is dismissed without prejudice.

_____
Superior Court Judge

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

10/16/01 DEPT. 37

Honarable MADELEINE I. FLIER, JUDGE
Honorable judge pro tem
N. AVALOS, C/A Deputy Sheriff

H. A. SMITH PUTY CLERK
ELECTRINIC RECORDING MONITOR
L. MACHUCA Reporter
13:30 BC252121 (NO LEGAL FILE) Plaintiff HILDA OZANTE (X)

PER Council IN PRO
HILDA I. OZANTE
VS.
SCHNEIDER Defendants S. BERMAN
RUTH PRAGER Council BERMAN, BERMAN
& BERMAN

NATURE OF PROCEEDINDS:
OSC – NO PROOF OF SERVICE FILED
OSC – NO DEFAULT JUDGMENT FILED
STATUS CONFERENCE;
MOTION OF SPECIALLY APPEARING
DEFENDANTS RUTH PRAGER
AND OSCAR CEPEIDA TO QUASH SERVICE OF
SUMMONS AND COMPLAINT;
Matter is called for hearing. Defendants' council submits on the tentative ruling. The Court hears argument of plaintiff.
The tentative ruling issues as the order of the court:
The motion is granted.
This entire action is dismissed without prejudice.
Madeleine Flier/Judge of the Superior Court
Counsel for defendant to give notice
Page 1 of 1 DEPT. 37 MINUTES ENTERED 10/16/01
COUNTY CLERK

APPENDIX C

Hilda L Ozante
9908 Domo Street
Whittier, CA 90601

Case Number B154237
Division 7
Hilda O. Ozante
v.
Law Offices of Ruth Prager, et al.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 7

October 7, 2002

Hilda O. Ozante
v.
Law Offices of Ruth Prager, et al.

B154237
Los Angeles County No. BC252121

THE COURT:

Petition for rehearing is denied. Justice Johnson would grant petition for rehearing.

cc: All Counsel
Fil

APPENDIX D

Court of Appeal, Second Appellate District, Division Seven - No. B154237
S110842

IN THE SUPREME COURT OF CALIFORNIA

En Banc

HILDA I. OZANTE, Defendant and Appellant,

v.

RUTH PRAGER, Defendant and Respondent.

Petition for review DENIED.

SUPREME COURT
FILED

DEC 1 1 2002

Frederick K. Ohlrich Clerk

DEPUTY

GEORGE

Chief Justice